



November 6, 2018

Via FedEx Overnight Delivery

Stephen M. Kissinger
Assistant Federal Community Defender
Federal Defender Services of Eastern Tennessee
800 Gay Street, Suite 2400
Knoxville, Tennessee 37929-9714

Re: David Earl Miller

Dear Mr. Kissinger:

By letter of October 29 to the Tennessee Department of Correction ("TDOC") and by motion for a TRO or preliminary injunction in federal district court, you have requested that your client, Mr. Miller, not be presented with the Affidavit Concerning Method of Execution (lethal injection waiver). In light of your request and to ensure that Mr. Miller is given an opportunity to exercise his right under Tenn. Code Ann. § 40-23-114(b) to select electrocution as his method of execution, I am enclosing herewith the form Affidavit Concerning Method of Execution (lethal-injection waiver) for you, as Mr. Miller's legal representative, to provide to your client, Mr. Miller, so that he can exercise that right, should he choose to do so.

By order of the Tennessee Supreme Court entered July 10, 2018, in case No. E1982-00075-SC-DDT-DD, I am required to notify Mr. Miller no later than November 21, 2018, of the method of execution that the TDOC will use to carry out his death sentence, now scheduled for December 6, 2018. Accordingly, should Mr. Miller desire to waive execution by lethal injection pursuant to Tenn. Code Ann. §40-23-114(b), I am constrained to ask that you notify me no later than 5:00 p.m. on November 20, 2018, of that decision.

Sincerely,

A handwritten signature in black ink. The signature appears to read "T Mays" followed by a stylized, cursive "W".

Tony Mays, Warden
Riverbend Maximum Security Institution

Encl. form Affidavit Concerning Method of Execution

Affidavit Concerning Method of Execution

Under Tennessee law, you have the right to have your execution carried out by lethal injection. You also have the option of waiving this right ---and choosing electrocution as the method of your execution. The purpose of this affidavit is to allow you an opportunity to either waive your right to have your execution carried out by lethal injection or to decline to waive that right. Failure to complete this form will result in the execution being carried out by lethal injection. You will not be given another opportunity to waive your right to have your execution carried out by lethal injection. If you waive your right to have your execution carried out by lethal injection, you may rescind that waiver by contacting the Warden **no later than 14 days prior to the date of the execution** and signing a new affidavit to that effect.

I, _____, TDOC.# _____, make the following choice concerning the method of my execution set to be carried out on the _____ day of _____:

I waive the right to have my execution carried out by lethal injection and choose to be executed by electrocution.

Signature of Inmate

I have been given the opportunity to waive my right to have my execution carried out by lethal injection and I decline to waive that right.

Signature of Inmate

I certify that I presented this Affidavit Concerning Execution to inmate _____, TDOC No. _____, and

The inmate refused to sign.

I witnessed the inmate sign this affidavit.

Signature of Warden/Designee

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission expires _____.